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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re C.W., a Person Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

P.T.,

Defendant and Appellant.

G057088

(Super. Ct. No. 18DP0771)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,  
Katherine E. Lewis, Judge. Affirmed.

Dennis Temko, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Jeannie Su,  
Deputy County Counsels, for Plaintiff and Respondent.

No appearance for the Minor.

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#### INTRODUCTION

Eight-year-old C.W. (the minor) was taken into protective custody after his mother P.T. (mother) was arrested for child abuse. The minor was placed in another state with his father Z.W. (father), who had been a nonoffending, noncustodial parent. After in-person and/or FaceTime visits with social workers from the Orange County Social Service Agency (SSA), social workers from the local social services agency, and the minor's appointed counsel, and following jurisdiction and disposition hearings, the juvenile court awarded sole legal and physical custody to father, and terminated the dependency proceedings. Mother appeals.

The juvenile court's findings were amply supported by the evidence, and the court's decision to terminate the proceedings was well within its discretion under Welfare and Institutions Code section 361.2. (Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.) We therefore affirm.

#### STATEMENT OF FACTS AND PROCEDURAL HISTORY

##### *A. DETENTION*

The minor, then eight years old, was taken into protective custody in July 2018 when witnesses observed mother strike him and scream obscenities at him. Mother admitted striking the minor. Both the minor and the maternal grandfather, who was present, stated that mother hits the minor "all of the time." Mother was arrested for

child abuse (Pen. Code, § 273d) and for threatening an officer by force of violence in the performance of his or her duty (*id.*, § 69, subd. (a)).<sup>1</sup>

Father resided in Nebraska. Father had been married to mother when the minor was born; they lived in Colorado until mother left with the minor about four years earlier. At that time, father was given legal advice that “there was nothing that he could do.” Father had been paying child support. Mother admitted she had terminated the minor’s phone contact with father in July 2017 because father would make promises to the minor and not follow through.

The juvenile court found a *prima facie* case for assertion of jurisdiction over the minor. (§§ 319, subd. (c), 300.) The court found there was a substantial danger to the minor’s health, and there were no reasonable means by which the minor’s physical or emotional health could be protected without removing him from mother’s physical custody. The minor was placed in a foster home. The court issued a criminal protective order prohibiting any contact between mother and the minor. The order was later modified to permit contact by means of telephone or FaceTime.

*B. THE MINOR IS PLACED WITH FATHER; SSA SUBMITS A JURISDICTION/DISPOSITION REPORT AND MULTIPLE ADDENDA.*

SSA vetted father for placement of the minor. Checks of criminal records, child and adult protective services records, and sex offender records revealed nothing regarding father that would make placement with him inappropriate. Father reported to SSA that he had a conviction for driving under the influence, and previously had substance abuse problems; father addressed these issues to SSA’s satisfaction. The Nebraska Department of Health and Human Services, Children and Family Services, conducted an inspection of father’s home, and found it to be appropriate. In

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<sup>1</sup> The arresting officers reported that mother threatened to kill them and their families.

September 2018, over mother's objection, the minor was approved for an extended visit with father in Nebraska.

SSA conducted conversations with father and the minor in Nebraska, via FaceTime. "The father reported that the child is adjusting well, has made several friends in the neighborhood, and is loving and playful with his half-sibling. . . . The child appeared clean without any visible signs of abuse. The child reported being happy with his father and shared that he is doing fun things like riding his orange bike, playing with his friends, and playing with his cat Marshmallow. . . . Father indicated that he had no other needs and that he is very happy to have his son."

Father later reported that the minor "immediately started freaking out and started crying" after spilling his drink while out to eat. The minor explained he was scared because mother would have hit him if he had had that type of accident.

In other FaceTime conversations, both the minor and father reported that things were going well. Father stated the minor "continues to do well and thrive." The minor's teachers reported that he was "really smart," although he was behind in math. The minor was learning numbers and making friends in school. The minor expressed, "I just have one thing I'm worried about, I miss my mom." The minor said he would feel "good" if he could speak with mother, and father agreed to set up a schedule with mother and monitor the calls.

In October, the social worker met the minor and father in Nebraska at father's home. The minor told the social worker he has nightmares, but could not remember what they were about. The minor shared that he missed his mom and wanted to have visits with her. His phone calls and FaceTime calls with mother were good. The minor liked being with mother and being with father "100%" each. The weather was nicer when he was living with mother, but with father he could play with the cats and dogs, go outside and to the park, and play with his friends. He did not like that father sometimes yelled at him when he got in trouble. Father was hoping to get the minor to

see a therapist regarding his nightmares, but was waiting for authorization from Medi-Cal. Overall, “father shared that there had been some, ‘rough spots, a little up and down, some off days, where in school he will be off task, not listen to the teacher and want to talk and play with his friends instead. He gets upset sometimes, cries, it’s a little more extreme than normal. I feel like he is afraid, he will tell me, when I would get in trouble at home my mom would hit me.’”

In the meantime, mother showed minimal progress toward alleviating or mitigating the causes necessitating the court’s involvement. Mother did not participate in a Child and Family Team meeting held to develop a plan for the minor’s placement. Mother failed to appear in person for the meeting, and the social worker terminated a phone call with mother due to mother’s continuous vulgar, offensive, and demeaning language toward the social worker. Mother did not believe some of the services in her case plan would be beneficial.

Mother did participate in parenting and anger management classes, outpatient rehabilitation, AA meetings, and weekly therapy. After being disrespectful toward personnel and refusing to follow protocol, mother was banned from one drug testing site. Mother missed several drug tests, and had one positive and three abnormal tests. SSA personnel terminated phone calls with mother due to her “explosive interruptions.”

*C. JURISDICTION HEARING; THE COURT FINDS THAT THE MINOR COMES WITHIN THE COURT’S JURISDICTION.*

In the jurisdiction and disposition report, SSA reported: “The mother has a history of drinking alcohol which may be related to her violent and angry outbursts. The mother has a history of general neglect and physical abuse in Riverside County. The mother has demonstrated that she lacks insight and lacks the ability to control and stabilize her emotions. The mother has neglected to tend to the child’s physical

health . . . .” In addendum reports, SSA recommended that the minor remain with father and that jurisdiction be terminated with exit orders to mother.

At the jurisdiction hearing in November 2018, father submitted on the evidence, and mother pleaded nolo contendere. The court found by a preponderance of the evidence that the minor came within the court’s jurisdiction pursuant to section 300, subdivisions (b)(1) (failure to protect) and (g) (no provision for care).

*D. DISPOSITION HEARING; THE COURT VESTS SOLE CUSTODY OF THE MINOR WITH FATHER AND TERMINATES THE DEPENDENCY PROCEEDINGS.*

At the disposition hearing, the juvenile court admitted into evidence the jurisdiction/disposition report and its six addenda,<sup>2</sup> as well as the criminal protective order protecting the minor from mother issued after the incident that began the dependency proceedings.

The social worker testified the minor missed mother. The social worker had no concerns regarding father’s ability to care for the minor. Father’s home was appropriate, and father was cooperating with SSA. The minor had not reported any mistreatment by or fear of father. The minor’s nightmares had not started until after the minor went to live with father. Father wanted to get therapy for the minor regarding the nightmares as well as an autism assessment, but was waiting for Medi-Cal coverage. While the social worker could not be sure father would follow through with therapy and the autism assessment, the social worker believed he would: “Since being in contact with the father, his only concern has been the safety of the child. He’s wanted to follow through as far as to therapy and assessment.” The social worker had no concerns about father’s ability to care for the minor appropriately or to obtain necessary therapy and assessments for the minor.

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<sup>2</sup> The fifth and sixth addenda, dated October 30, 2018 and November 13, 2018 respectively, are both titled “Addendum #5.”

The social worker also testified mother had participated in services, including anger management classes, substance abuse therapy, counseling, and narcotics and alcoholics anonymous meetings. Some of mother's drug tests were missed or diluted.

The maternal grandmother testified that she had witnessed father yelling at mother during calls with the minor, and hanging up when he thought mother had said something inappropriate. The maternal grandmother had not seen mother act aggressively or inappropriately during calls. She thought the minor should be with mother.

The minor's counsel agreed with SSA that the minor should be placed with father, and that jurisdiction should be terminated. The minor's counsel provided the following argument in support of his recommendation: "We also have gone out to see [the minor]. . . . [¶] One of the reasons why we went out was to determine whether we should close the case now or keep it open six months because [the minor] had needs that were serious enough to warrant some type of oversight by this court and to make sure the services happened.

"So when we went out, I'll tell you our client communicated freely with us, was polite, had eye contact. The only thing that I would agree with Grandma's comments about the child, which are quite concerning because she alleges he's got special needs and autism and all these problems—lacking socially, flailing hands, screaming bloody murder—none of that was observed on our visit. He's very intelligent—I would say more than average—and was able to communicate freely.

"He did not report any screaming or yelling, and he did not report anything unsafe in the father's home. He does love his mother. He misses California, and he is bonded to his mother and loves her. But other than that, there was no safety concerns.

"Father is a non-offending father. He has a new baby that's in their care. A social worker has stated that baby appears to be well cared for. There was no concerns

with the girlfriend that father lives with. The father did have a history, but apparently it was dealt with some time ago. I believe in the reports it said he had a DUI or some issues ten years ago and had substance abuse treatment at that time. So it's been quite an old history, and there's just nothing that came up from our perspective that would warrant keeping the case open any further."

The juvenile court declared the minor to be a dependent of the court pursuant to section 360, subdivision (d). The court found that reasonable efforts were made to prevent or eliminate the need for removal of the minor from mother's home. The court then found by clear and convincing evidence that (1) section 361, subdivision (c)(1) and (5) applied, (2) vesting custody with mother would be detrimental to the minor, and (3) vesting sole physical and legal custody with father was in the minor's best interest.

The court also found the conditions justifying the assumption of jurisdiction no longer existed, and terminated the dependency proceedings. Mother was ordered to have twice weekly FaceTime or telephonic visits, each call to be up to one hour in length. The court also ordered that mother could have monitored visitation with the minor if mother traveled to Nebraska or the minor and father traveled to California.

#### DISCUSSION

"[T]he juvenile court retains the discretion in an appropriate case to terminate its jurisdiction at the close of a disposition hearing when it finds services and continued court supervision are not necessary to protect the child." (*In re Destiny D.*



(2017) 15 Cal.App.5th 197, 208.) We review the juvenile court’s order terminating jurisdiction for abuse of discretion. (*Id.* at p. 212.)<sup>3</sup>

In enacting section 361.2, “the Legislature envisioned a two-step process: under subdivision (a), the court examines whether it would be detrimental to temporarily place a child with the nonoffending noncustodial parent; under subdivision (b), the court decides whether that placement should be permanent and whether the court’s jurisdiction should be terminated.” (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1131.)

Mother points to the possibility that the minor had an undiagnosed autism spectrum disorder, the fact that the minor had started experiencing nightmares while in father’s care, and the minor’s need for therapy and a special needs assessment that father would be unable to obtain until Medi-Cal coverage for the minor “come[s] through.” The juvenile court’s findings were contrary to mother’s assessment of the facts. The court found that the minor’s nightmares were caused by past trauma, referring to trauma caused by mother. The court also found that mother’s contention that the minor had special needs was “undocumented” and that mother had “never [seen] fit to have him evaluated by a professional.”

The court found that vesting sole custody with father was necessary due to “mother’s belligerent attitude, the existence of the no-face-to-face-contact criminal protective order and mother’s general attitude in this case thus far.”

The court stated it was “completely satisfied that father is taking very good care of [the minor] and addressing all of his needs. The court recognizes that given the situation that brought the case before the court, [the minor] probably is going to need some therapy to deal with his past trauma. It sounds like he’s dealing with it in some

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<sup>3</sup> Both mother and SSA agree that the juvenile court improperly based its order on section 361, which applies to placement with custodial parents, rather than on section 361.2, which applies to placement with noncustodial parents. Both also agree, however, that the analysis under either section is the same. We will cite to section 361.2 in this opinion.

way at this point with his nightmares, and that father is doing everything that he can in order to address that through therapy. He has to wait until insurance can be transferred to the new state in order to actually get that going, but from all accounts, it appears that he's in the process of doing that and that by relieving supervision in this case, that's not going to affect his willingness to meet his child's needs."

These findings were all supported by substantial evidence. The court's finding that it would not be detrimental to place the minor with father was amply supported by evidence that father's home was appropriate and the minor was happy and thriving in father's care. The finding that the placement should be permanent and the court's jurisdiction should be terminated was also supported by evidence and that therapy and a special needs assessment for the minor would be undertaken as soon as the minor's insurance coverage was settled. While there was no specific date by which this would occur, we do not reassess the juvenile court's findings regarding the credibility of the witnesses. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1177.) The court concluded that father would make these things happen, and that the court's continuing supervision was not necessary to ensure he did so.

The trial court's discretion in selecting one of the three disposition options under section 361.2, subdivision (b) is "very broad." (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1495-1496, disapproved on other grounds in *In re Chantal S.* (1996) 13 Cal.4th 196, 204; see *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651-652.)

*In re Austin P.*, *supra*, 118 Cal.App.4th 1124, on which mother relies, does not change our analysis. In that case, the noncustodial father challenged the juvenile court's refusal to terminate the dependency proceedings after the minor had been placed with him. (*Id.* at p. 1128.) Substantial evidence, however, showed a need for continuing supervision: "The Agency felt it should monitor Austin's transition into Father's home, in view of their sporadic contact over the past 10 years. The court also wanted to monitor the conflict among the adults and ensure that Austin would not be blamed for the

dependency. In addition, the social worker believed Austin needed both individual therapy and conjoint therapy with each parent, which would occur only if the matter remained open. The social worker was also concerned that Father and Rachel were aware that Austin had been physically abused and neglected by Mother, but had not taken steps to protect him. Without continuing jurisdiction, the social worker could not ensure that Austin would be adequately protected while in the care of Father and Rachel. Further, the social worker was concerned about the relationship between Mother and Rachel, and Father and Rachel were anxious about having to be in contact with Mother and coping with her erratic behavior. [¶] The social worker also recommended continuing jurisdiction because even though Austin was happy living with Father, Mother was the only parental figure he had ever known. He was more bonded with Mother than with Father and he wanted to reunify with her. Although Austin was usually stoic, every time the social worker spoke with him, he cried and said he wanted to be with Mother. Additionally, Mother had been making good progress with her reunification plan.” (*Id.* at p. 1134.) Here, no such factual issues are present, and the juvenile court, SSA, and the minor’s counsel all agreed that continuing supervision was unnecessary.

The present case is more like *In re Janee W.* (2006) 140 Cal.App.4th 1444, 1450, in which the juvenile court awarded full legal and physical custody of the children to the noncustodial father, and terminated jurisdiction. On appeal, the mother argued that the dependency proceeding should have been continued because the father “had little or no relationship with the minors and was also found to have neglected the children by not providing for them.” (*Id.* at p. 1453.) The appellate court rejected the mother’s argument: “That may have been the case when the court first assumed jurisdiction over the children, but the undisputed evidence . . . shows that those circumstances had completely changed by both the six-month and 12-month review hearings.” (*Ibid.*)

The juvenile court did not abuse its discretion by terminating jurisdiction over the minor pursuant to section 361.2, subdivision (b)(1).

DISPOSITION

The order is affirmed.

FYBEL, ACTING P. J.

WE CONCUR:

IKOLA, J.

GOETHALS, J.